A visit in 1888 to El Azhar, the Mussulman university at Cairo, with its two hundred professors and nearly eight thousand students, gives occasion to some pages of charming description. These lead to a discussion of the mischiefs which must result from the identification of law and theology. Given an unerring book covering both, there can be no development of law, as a living organism and religion degenerates into mechanical formalism. Fortunate for the Western world that the New Testament is not and cannot furnish forth a code. Equally fortunate that the civil law was so intrenched in Europe that the canon law never had any chance to supersede and smother it.

The two addresses referred to amount to an argument, and a powerful one, supported by the speaker's long experience, in favor of giving large place in law schools to the civil law. The law student who expects to give three years to professional studies is advised to devote the first to Roman law.

Taken as a body, these recreations of an author who has placed his generation under heavy obligations for works of first-rate merit, can add little, if anything, to his well-earned fame. It was still worth his while to collect and edit them. It is worth the while of thoughtful students of Anglo-American history and politics to read them. Those readers who are competent to differ with the author on minor points of accuracy or even upon more important matters will do so with modesty and respect.

WILLIAM W. FOLWELL.

University of Minnesota

Reconstruction and the Constitution, 1866-76. By JOHN W. BURGESS, Ph. D., LL. D. Pp. xii, 342. Price, $1.00 net. The American History Series. New York: Charles Scribner's Sons, 1902.

Professor Burgess' latest work is something more than a narrative essay, setting forth the history of the Constitution of the United States and the progress of reconstruction. Nor is the author content with the mere presentation of facts and theories. He boldly expresses his own views and opinions of both men and measures. He does not hesitate to tell us what, in his judgment, ought to have been done. The values of the legislative, administrative, and military acts of the period are tested by what the author holds to be the principles of "sound political science and correct constitutional law;" while the conduct of men is judged from a politico-ethical standpoint. The higher aim or purpose of the author seems to be to aid in the reconciliation of the North and South through an impartial presentation of the facts and a candid admission of the errors of reconstruction.

Through the mass of legislative and administrative details Professor Burgess sees that the essential political problem of this period in American history is reconstruction Furthermore, the author sees clearly that "the key to the solution of the question of reconstruction is the proper conception of what a 'state' is in a system of federal government." And so in the very first chapter he points out that, in the federal system of the United States, a "state" is a "local self-government under the supremacy of the Constitution of the United States, and of the laws and treaties of the central government

made in accordance with that Constitution, republican as to form, and possessed of residuary powers—that is, of all powers not vested by the constitution of the United States exclusively in the central government, or not denied by that Constitution to the 'state.' "

Moreover, the author declares that the Constitution of the United States provides for and recognizes three kinds or species of local government, viz., "local government by the executive department of the central government—that is, local government by executive discretion, martial law; local government as an agency of the legislative department of the central government—that is, territorial government, and 'state' government."

Thus a "state" of the American union is not indestructible. The theory of "state" perdurance is unsound. Having emerged from the status of a territory, a "state" may again revert to that status.

When a "state" attempts to break away from its connection with the American system of federal government, it forcibly resists the supreme law, destroys the prime condition of its existence, and makes it necessary for the central government to assert exclusive power in such district. Under such circumstances it is clearly the function of the executive department to act first and subdue by force the force which has been offered against the Constitution and the laws of the United States. When the work of the executive department has been successfully accomplished, it is then the business of the legislative department to determine how the people of the rebellious district shall be civilly organized anew. That is to say, it is for Congress to determine the policy of reconstruction, and the President may not interfere with such congressional action, except through the exercise of his legitimate veto power.

The conditions which gave rise to the problem of reconstruction in the United States were: first, the attempt on the part of existing "state" organizations to resist the execution of the supreme law of the land; and, secondly, the defeat of that attempt by the executive department of the central government through the exercise of military power.

President Lincoln was, perhaps, the first to advocate a plan or policy of reconstruction. He recognized the "continued existence of the 'states' in rebellion as 'states' of, and in, the Union," since he looked upon rebellion as the act not of "states" but of combinations of disloyal persons in the "states," who had subverted the "state" governments. The problem of reconstruction, therefore, consisted of placing a loyal element in possession of the governments of these "states" in which rebellion had existed. Furthermore, Mr. Lincoln believed that the work of solving this problem belonged to the executive department of the central government. He proceeded on the assumption that "it was the work of the executive, through the power of pardon, to create a loyal class in a 'state' which had been the scene of rebellion, and it was the work of the executive to support that class by the military power in taking possession of, organizing, and operating the 'state' government."

President Johnson's views on rebellion and reconstruction had at one time been more radical than those held by his predecessor; but his ideas were

subsequently modified through the influence of Secretary Seward, who shared Mr. Lincoln's theories. In his proclamation of May 29, 1865, Mr. Johnson "proposed to pardon the rebel leaders, upon special personal application, as an act of high executive grace, and to amnesty every one else in a body; and upon the basis of their re-established loyalty, to use the old electorate of the South in reconstruction."

It appears throughout that Mr. Johnson's policy and acts were but a continuation of those of Mr. Lincoln. "If Lincoln was right so was Johnson, and *vice versa*." The whole plan "rested upon the theory of the indestructibility of the 'states,' their perdurance as 'states' throughout the period of rebellion, the commission of treason and rebellion by combinations of private persons, the right of the executive to withdraw his military powers and put his civil powers in operation whenever, in his judgment, the circumstances would warrant him in so doing, and his authority to recognize the old electorates of the 'states' in which rebellion had existed as the respective constituent bodies of the 'states,' upon such terms and under such limitations as he might prescribe."

Congress, however, did not acquiesce in the theory that reconstruction should be effected by and through the executive department. Both the Senate and the House soon came to the view that reconstruction was a legislative problem. It was, indeed, a question of the "admission, or the re-admission, of 'states' into the Union, or, more correctly, the question of the establishment or re-establishment of the 'state' system of local government upon territory of the United States under the exclusive power of the central government." This, Professor Burgess contends, was sound political science. It was right and proper for Congress to brush aside executive reconstruction and take up the burden as a legislative problem. It was right to free the slaves and adopt the Thirteenth Amendment to the Constitution. Nor did the civil rights bill violate the principles of sound political science. To secure to the freedmen civil rights was an act required by public morality. The adoption of the fourteenth amendment was likewise justifiable and in accordance with correct constitutional law.

But Professor Burgess is emphatic in declaring that certain acts relative to the Freedmen's Bureau were radical measures; that the impeachment proceedings against President Johnson were unwarranted; that the reconstruction act of 1867 was not only unsound and unnecessary, but positively "the most brutal proposition ever introduced into the Congress of the United States;" that the tenure of office act was both contrary to the Constitution and mean; and that the creation of the new electorate in the South was nothing short of a crime. The conditions did not justify the severe remedies of martial law and negro suffrage.

In reference to the creation of the new electorate in the South, Professor Burgess says: "Congress did a monstrous thing, and committed a great political error, if not a sin;" and he thinks that "anybody of common sense and common honesty could, at the time, have foreseen some of the horrible results which were sure to follow."

The author believes that, besides the establishment of martial law and

the enfranchisement of the negroes, there were two other conceivable ways of reconstructing the rebellious "states" and of guaranteeing civil liberty to the freedmen. "The one was to establish territorial civil governments in the late rebellious region and maintain them there until the civil relations between the two races became settled and fixed. The other was so to amend the Constitution of the United States, before the readmission of the 'states' which had renounced the 'state' form of local government under the Union, as to give Congress and the national judiciary the power to define and defend the fundamental principles of civil liberty."

The author's summary view is, perhaps, best presented in the last paragraph of chapter XXX, where he says: "Slavery was a great wrong, and secession was an error and a terrible blunder, but reconstruction was a punishment so far in excess of the crime, that it extinguished every sense of culpability upon the part of those whom it was sought to convict and convert. More than a quarter of a century has now passed since the blunder-crime of reconstruction played its baleful part in alienating the two sections of the country. Until four years ago little progress had been made in reconciling them. It is said now that the recent war with Spain, in which men from the North and men from the South marched under the same banner to battle and to victory, has buried the hatchet forever between them. But they had done this many times before, and yet it did not prevent the attempt to destroy the Union. It cannot be in this alone that the South feels increased security against the doctrines and the policies and interferences of the Republican party with regard to the negro question, the great question which has made and kept the South solidly Democratic. It is something far more significant and substantial than this. It is to some the pleasing, though to others startling, fact that the Republican party, in its work of imposing the sovereignty of the United States upon eight millions of Asiatics, has changed its views in regard to the political relation of races, and has at last virtually accepted the ideas of the South upon that subject. The white men of the South need now have no further fear that the Republican party, or Republican administrations, will ever again give themselves over to the vain imagination of the political equality of man. It is this change of mind and heart on the part of the North in regard to this vital question of Southern 'state' policy which has caused the now much-talked-of reconciliation."

BENJ. F. SHAMBAUGH.

University of Iowa.

The Treaty-making Power of the United States. By CHARLES HENRY BUTLER. Pp. cii, 786. 2 vols. Price, $12.00. New York: Banks Law Publishing Company, 1902.

This work covers a field that has received but little attention either in legal treatises or in works on political science. Since the entry of the United States into the arena of world politics, the treaty-making power has acquired a position of peculiar significance from both an economic and political point of view. We are beginning to appreciate the fact that, under a broad inter-